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**IN THE HIGH COURT OF PUNJAB & HARYANA
AT CHANDIGARH**

CRM-M-2765-2022

Date of Decision: 28.09.2022

Ravinderjit Singh @ Ravi

..... Petitioner

Versus

State of Punjab

..... Respondent

CORAM: HON'BLE MR. JUSTICE JASGURPREET SINGH PURI

Present: Mr. Rhythem Bajaj, Advocate for
Mr. S.P.S. Sidhu, Advocate,
for the petitioner.

Mr. Amit Rana, Sr. DAG, Punjab.

JASGURPREET SINGH PURI, J. (ORAL)

The present petition has been filed under Section 439 of the Code of Criminal Procedure for grant of regular bail to the petitioner in case bearing FIR No.28 dated 20.03.2021, under Sections 22-C & 29 of the N.D.P.S. Act, 1985, registered at Police Station Khamanon, District Fatehgarh Sahib.

Learned counsel appearing on behalf of the petitioner has submitted that the petitioner is in custody since 20.03.2021, which is almost 1½ years. He further submitted that the charges were framed in the present case on 27.02.2022, which is almost 7 months ago and despite a number of adjournments by the learned Trial Court, no witness has been examined till date. He also submitted that the petitioner has got clean antecedents and is not involved in any other case. He further submitted that even otherwise also as per the allegations in the FIR, there had been an alleged recovery of

80 injections of *Buprenorphine* containing 2 ml. each and 80 vials of Avil containing 10 ml. each. He also submitted that so far as the injections of Avil is concerned, the same does not fall within the purview of NDPS Act and so far as the *Buprenorphine* is concerned, the same were allegedly 80 in number which were 80 doses and were less than 100 doses, and therefore, in view of Rule 66 of the NDPS Rules, the petitioner could have carried the same even without any medical prescription. He further referred to the judgment of this Court passed in “**Sukhwinder Singh @ Vicky Vs. State of Punjab**”, **2021(1) RCR (Criminal) 177** and prayed that in view of the aforesaid judgment, he may be considered for the grant of regular bail. He further submitted that the petitioner has been falsely implicated in the present case and no justification has come forward from the State to show as to why for 7 months, no witness has been examined since it is a case under the NDPS Act and the witnesses are only official witnesses.

On the other hand, Mr. Amit Rana, learned Sr. DAG, Punjab, on instructions from ASI Daljeet Singh, has submitted that it is correct that the petitioner is in custody since 20.03.2021, which is almost 1½ years and charges were framed on 27.02.2022, but no witness has been examined till date. He further submitted that the petitioner is not involved in any other case. He has however opposed the grant of regular bail to the petitioner on the ground that the quantity confiscated by the petitioner falls under the category of commercial quantity under the NDPS Act, and therefore, the prayer of the petitioner is hit by the bar contained under Section 37 of the NDPS Act.

I have heard the learned counsel for the parties.

The petitioner has faced incarceration for almost 1½ years. As per the learned counsel for the parties, the charges were framed on 27.02.2022, but for 7 months despite repeated adjournments, no prosecution witness has been examined till date. It is a case of NDPS Act and the witnesses are official witnesses only. On a specific query being raised to the learned State counsel, as to what is the justification and as to why no witness has come forward to depose particularly considering the fact that 7 months have been elapsed after the framing of charges and the petitioner is stated to have clean antecedents, he was not able to justify with regard to the non-appearance of the official witnesses before the learned trial Court. This Court would, therefore, consider the effect of Section 37 of the NDPS Act in the present case. Firstly, there is no justification coming forward from the State Counsel as to why no witness has been examined despite the fact that the charges were framed 7 months ago. Secondly, the petitioner is having clean antecedents and the alleged recovery was only 80 injections/doses of *Buprenorphine*, and therefore, the judgment of this Court passed in ***Sukhwinder Singh @ Vicky's case (Supra)*** will apply in the present case. So far as the second ingredient for making a departure from Section 37 of the N.D.P.S. Act is concerned, it is not the case of the State that in case the petitioner is released on bail then he may abscond or flee from justice. Therefore, considering the aforesaid facts and circumstances, this Court is of the *prima facie* view that there are reasons to believe that the petitioner is not guilty of offence at least at this stage, and therefore, the bar contained under Section 37 of the NDPS Act will not apply in the present case since both the ingredients for making departure from the bar remain satisfied.

In view of the aforesaid facts and circumstances of the case, this Court deems fit and proper to grant bail to the petitioner. Consequently, the present petition is allowed and the petitioner is ordered to be released on bail on furnishing bail bond/surety bond to the satisfaction of the trial Court/Duty Magistrate concerned, if not required in any other case.

However, anything observed hereinabove shall not be treated as an expression of opinion on merits of the case and is only meant for the purpose of decision of present petition.

28.09.2022*Bhumika***(JASGURPREET SINGH PURI)
JUDGE**

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| 1. Whether speaking/reasoned: | Yes/No |
| 2. Whether reportable: | Yes/No |